

**Committee on Energy and Commerce
Subcommittee on Oversight and Investigations**

**Hearing on
“In the Dark: Lack of Transparency in the Live Event Ticketing Industry”**

February 26, 2020

Mr. Bryan Perez, Chief Executive Officer, AXS

The Honorable Frank Pallone, Jr. (D-NJ)

1. In a 2018 report, GAO found that [quote] “the technology and other resources of professional brokers give them a competitive advantage over individual consumers in purchasing tickets at their face-value price.” And in your written testimony, you explained that some brokers use bots to [quote] “manipulate ticketing platforms so that the brokers can buy a large amount of tickets at once and gain a huge advantage over individual consumers.” What types of competitive advantages do brokers have and how do they unfairly disadvantage average consumers?

As noted, brokers have a competitive advantage over average consumers because brokers can employ personnel and software, or “bots,” to buy up many tickets in the primary market as soon as they are released. When tickets go on sale, brokers deploy bots to complete multiple simultaneous searches of the primary ticket seller’s website and reserve or purchase hundreds of tickets faster than any human can. Other brokers employ numerous personnel who can also conduct multiple searches and purchase tickets on behalf of the broker at the same time and use multiple names, addresses, credit card numbers, or IP addresses to avoid ticket purchase limits.

The practical effect of these techniques is that brokers are often capable of buying up most of the tickets in the primary market, meaning that the only place consumers can obtain tickets is the resale market, where tickets are sold for significantly higher prices. Notably, tickets to popular events are frequently underpriced in the primary market. Brokers make a practice of marking up tickets in the resale market for a substantial profit. Their profits come at the expense of the average consumer, who is unable to compete with brokers for face-value tickets in the primary market.

The Honorable Brett Guthrie (R-KY)

1. As you know, the Better Online Ticket Sales Act (BOTS Act) was signed into law in 2016. Are bots still a challenge in the live event ticketing industry? If so, please explain.

Yes. Brokers attempting to buy and sell a large number of tickets at inflated prices often use bots to do so. Bots allow brokers to manipulate ticketing platforms so that the brokers can buy a large amount of tickets at once and, in so doing, gain a huge advantage over individual

consumers. Bots are designed to buy up tickets in the primary market, driving consumers to obtain tickets in the resale market, where tickets are often sold for substantially higher prices.

The BOTS Act criminalized the use of bots to circumvent ticket purchasing limits and security measures put in place by ticketing platforms so that as many fans as possible can obtain tickets at reasonable prices. However, to date, AEG is not aware of any successful action brought pursuant to the BOTS Act. In its April 2018 report, the Government Accountability Office (“GAO”) acknowledged that brokers continue to use bots to amass a large number of tickets very quickly and create a competitive advantage over average customers.

- a. Would there be a benefit to the consumer if the FTC and states started to take enforcement actions under this statute? Why or why not?

Yes, there would be a benefit to consumers. BOTS Act enforcement actions would diminish the incentives prevalent in the market to use bots in order to obtain tickets for events at the expense of real fans, driving those fans to the higher-priced resale market. The FTC and state attorneys general should make prosecuting the illegal use of bots an enforcement priority.

Enforcement of the BOTS Act would also be consistent with action other countries are taking to prevent the fraudulent purchase and resale of tickets on a large scale. For example, on February 13, 2020, the Leeds Crown Court in the United Kingdom found two men guilty of fraudulent trading for utilizing different names and IP addresses to bulk purchase tickets from primary sellers and for selling speculative tickets.

2. Does your company and/or affiliated websites utilize ‘all-in’ pricing and/or an ‘all-in’ pricing toggle feature? Why or why not?
 - a. If so, what percentage of your websites and/or affiliated websites utilize ‘all-in’ pricing?

AEG’s subsidiary ticketing platforms, AXS and Elevate, do not currently utilize all-in pricing (i.e. displaying only a lump sum total price as opposed to displaying a breakdown of the components that comprise the total price) because the nature of the ticketing market is such that ticketing platforms cannot compete on a level playing field if some actors utilize all-in pricing functionality and other actors do not. Done in isolation from the rest of the ticketing market, all-in pricing by AXS and Elevate would create the false appearance that the tickets sold by AXS and Elevate are priced higher than those on other sites. Even a toggle function would significantly undermine AEG’s ability to compete in the market unless all other platforms utilized the same functionality.

This is why AEG is supportive of regulations that would require all-in pricing for every actor in the market. All-in pricing benefits consumers because it requires ticketing platforms to disclose the full price of the ticket, including fees and taxes, early in the purchase process. However, any regulatory scheme mandating all-in pricing must apply equally to all actors in the market, including both primary and secondary sellers. If some actors are not required to adopt all-in pricing, those who do adopt it will be placed at a great disadvantage.

3. Your testimony notes that “resellers will mark down the face value of their tickets and charge more for buyers’ fees later in the transaction” and that this is a practice already utilized by the major resale sites. How often do you see this occurring?

AEG has observed that this practice is regularly utilized by the major resale sites. Notably, the GAO found in its 2018 report, “Fees charged by secondary ticket exchanges we reviewed were higher than those charged by primary market ticket companies. Secondary ticket exchanges often charge service and delivery fees to ticket buyers on top of the ticket’s listed price.” For a compilation of illustrative examples of this practice, AEG refers you to Exhibit 1 (“Deceptive Pricing: Markdowns Paired with High Fees”) included in Ticketmaster’s prepared written testimony in connection with the instant hearing.

4. Does your company or any of its affiliated websites sell dynamically priced tickets?

AXS and Elevate sell dynamically priced tickets when requested to do so by their clients. AXS and Elevate do not own the tickets that they sell; rather, AXS and Elevate act in agent capacities for clients, such as venues or promoters, which sell such live event tickets to their fans. As a result, clients ultimately determine when to sell dynamically priced tickets, enabling the price of the ticket to change based on demand. Dynamic pricing is beneficial because it decreases the incentives for brokers to buy up all the tickets on the primary market and sell them at a substantial markup on the secondary market. In essence, if the primary seller is able to sell tickets at the market rate using dynamic pricing, brokers are less likely to make a profit in the secondary market.

- a. What percentage of overall sales does dynamically priced tickets represent?

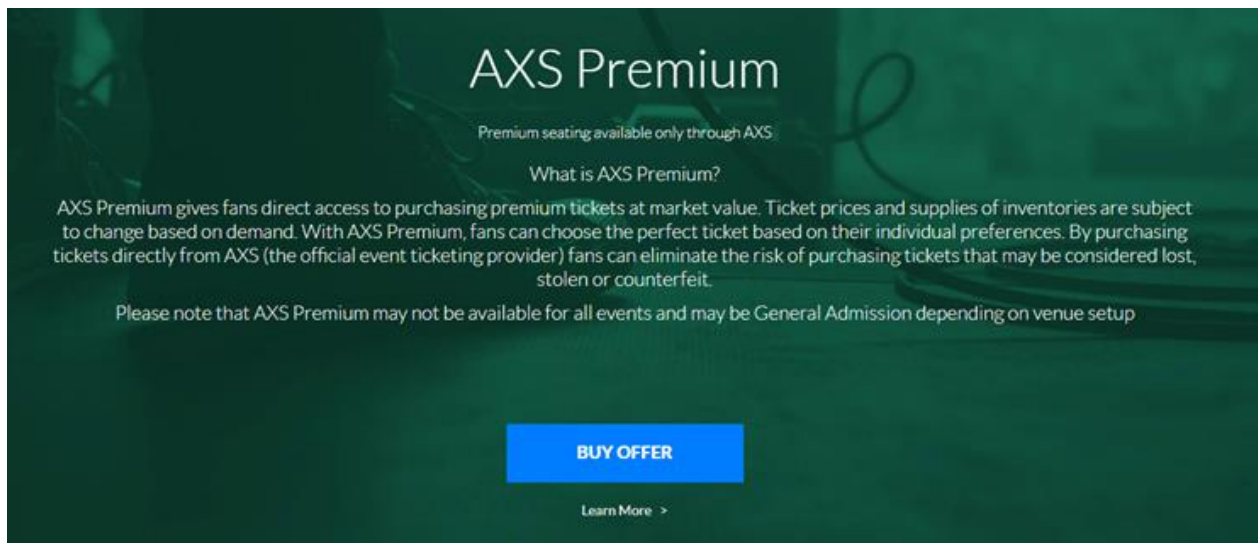
AEG does not have statistics available regarding the percentage of overall sales that dynamically priced tickets represent; it is our estimation that the percentage is small.

- b. Are tickets that are held back at the on-sale by the artist, promoter, venue, etc. later posted for sale as dynamically priced tickets rather than face value?

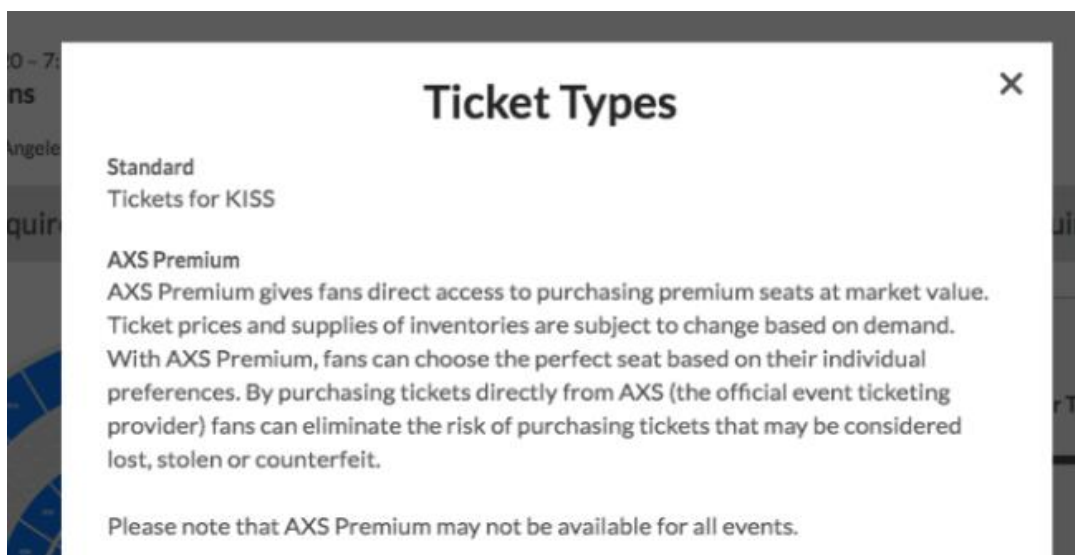
The determination as to whether to hold back some tickets for dynamic pricing is made by the client, not AXS or Elevate. AXS and Elevate do not maintain records regarding when such determinations were made. AEG and its subsidiaries in their capacities as ticketing clients of AXS and Elevate (collectively, “AEG Clients”) may hold back some tickets for dynamic pricing in order to adjust prices up or down to reflect market demand. Dynamic pricing, which is also widely utilized in other industries (e.g., airlines, hotels), decreases incentives for brokers to sell tickets at a markup on the secondary market.

- c. Does your company or any of its affiliated websites make disclosures to consumers when a ticket is dynamically priced, and what that means? If so, what does that look like?

Yes, each dynamically priced ticket offered by AEG contains language alerting consumers that the ticket may be priced dynamically (i.e. the price of the ticket may change based on demand). For example, the disclosure language that AXS uses is as follows:



When tickets that are priced dynamically are comingled with other tickets in an interactive seat map, AXS also utilizes the following disclosure:



Finally, language regarding tickets that may have been priced dynamically can be found on the AXS FAQ page:

<https://support.axs.com/hc/en-us/articles/200747215-What-is-AXS-Premium>.

5. Your testimony notes that sharing inventory levels will not fix [the] problem without addressing the problem of ticket brokers. Please explain what you mean by that statement.

The main problem confronting consumers is that they feel they cannot obtain access to live events they want to attend. This results from brokers utilizing technology, including bots, and personnel to buy up the supply of face-value tickets on the primary market and selling those tickets at substantial markups on the secondary market. This problem cannot be rectified by sharing inventory levels. In fact, according to the 2018 GAO report, disclosure of inventory levels could help brokers by giving them information about how many tickets they should purchase and what prices they should set in the secondary market in order to maximize profits. For example, when ticket availability is low, brokers know that they can raise prices on tickets in the resale market.

Instead, there are more effective and readily-available policy solutions to address the problem created by brokers and bots. For example, the BOTS Act criminalizes the use of bots to circumvent ticket purchasing limits and existing security measures in place on ticketing platforms so that as many fans as possible can buy reasonably-priced tickets. The FTC and state attorneys general should make prosecuting the illegal use of bots an enforcement priority, using the BOTS Act. This would diminish the incentives brokers have to use bots in order to obtain tickets for events at the expense of real fans, driving those fans to the higher-priced resale market.

6. Approximately what percentage of events that your company sells tickets for have tickets that are non-transferrable?

From 2016 to 2018, the number of AXS events for which tickets were non-transferrable was less than 1%. Elevate did not have electronic transfer capabilities until late 2019, so it does not have data responsive to this question.

7. In the event that your company sells tickets that are deemed non-transferable, what efforts are taken to ensure that consumers and secondary marketplaces are aware that the tickets are non-transferrable to avoid confusion and frustration down the road?

When transferability is restricted for a particular event (as requested by the artist), the customer is notified of any such restrictions during the purchase process, either within the purchase flow or in a pop-up message available within the flow. Additionally, AXS and Elevate frequently notify secondary marketplaces that tickets for an event are non-transferable.

- a. If you make attempts to notify the secondary market that an event has non-transferrable tickets, what response do you typically receive? Do you generally still see the secondary marketplaces posting those tickets?

AXS and Elevate seek to ensure that tickets deemed by clients to be non-transferable are not transferred on the secondary market. AXS and Elevate notify the consumer during the purchase process that the ticket is non-transferable. AXS and Elevate are not generally aware of any consumers complaining to us about non-transferability. AXS and Elevate frequently notify secondary marketplaces when tickets for an event are non-transferable. In those instances, the secondary marketplaces often, but not uniformly, will not offer such tickets for sale.

8. Your testimony notes that “without limits on transferability, brokers would buy up most of the tickets in the primary market that are underpriced.” However, your testimony goes on to say that you “recognize that for some events, like sports games, it is critical for consumers to have the ability to transfer tickets to games when they cannot go.” Can you please explain why there is a distinction between sporting events and concerts with respect to the transferability of tickets?

Fans typically buy tickets to one concert on a date they have determined they will be able to attend. However, the sports universe presents a different dynamic because season ticket holders buy tickets to many different dates at once. For example, National Basketball Association (“NBA”) and National Hockey League (“NHL”) season ticket holders buy tickets to 41 games as part of their season ticket packages. Most fans cannot attend all 41 games, so they must be able to transfer their tickets to others or sell them on the secondary market. For single-night concerts, transferability restrictions are more practical and may benefit fans by preventing brokers from buying up all the primary market tickets and selling them for substantially higher prices on the resale market.

9. Your testimony states that “speculative ticketing is plain, old-fashioned fraud.” Please elaborate.

Speculative tickets are tickets that have been put up for sale by someone who does not yet have the ticket in hand or lacks a contractual right to receive the ticket, and therefore may never be able to provide the fan with the ticket he or she purchased. As a result, fans may be left without a seat at all, despite having paid for a ticket, or be left with a different ticket than the one purchased. That practice is fraudulent because it allows bad actors to take fans’ money without, in many cases, providing what was originally offered in return.

- a. Your testimony also notes that while the practice is illegal in some states, it is still widespread. How do you know that it is still widespread?

AEG is aware there are entities that scrape our sites to create listings at inflated prices on their own sites before tickets even go on sale, which is patently deceptive and results in fans paying more for tickets than otherwise necessary. The Company regularly sees such inflated listings on third party sites before tickets go on sale. AEG refers you to Exhibit 5 of Ticketmaster’s written testimony (“Speculative Ticketing”), which contains examples of deceptive speculative ticketing in the secondary market. Additionally, the GAO stated in its 2018 report:

[N]umerous industry representatives told us that [secondary] sites commonly do not enforce [the prohibition on speculative tickets] and listing of speculative tickets was widespread. One common form of speculative ticketing occurs when brokers offer tickets after a popular artist has announced a concert schedule but not yet begun ticket sales, according to industry representatives.

The January 2016 New York State Attorney General’s report entitled, *Obstructed View: What’s Blocking New Yorkers from Getting Tickets* also reported that brokers continue to sell speculative tickets.

10. Does your company monitor its websites or affiliate websites for speculative tickets?

- a. What actions does your company take if it finds or is made aware of a speculative ticket being listed?

AXS and Elevate do not permit the sale of speculative tickets on their ticketing platforms, whether in the primary or secondary marketplaces, and our sites are designed such that sellers cannot list a speculative ticket at all.